



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: September 6, 2005

COUNCIL DISTRICT: 8

SUPPLEMENTAL

SUBJECT: H00-039. APPEAL OF THE DIRECTOR'S DECISION TO DENY A SITE DEVELOPMENT PERMIT TO ALLOW A 78,492 SQUARE FOOT MINI-STORAGE BUILDING AND AN OUTDOOR BOAT AND RV STORAGE YARD LOCATED ON THE SOUTH SIDE OF TULLY ROAD 850' NORTHERLY OF QUIMBY ROAD ON A 5.02 ACRE SITE.

BACKGROUND

On May 25, 2005, the Planning Commission opened the public hearing on the matter of an appeal of the Director's decision to deny a Site Development Permit that would allow the construction of a 78,492 two-story mini-storage building and a storage yard for boats and RVs. The proposed project is located across the street from the runways at the Reid-Hillview Airport. The Director of Planning had previously denied the application due primarily to the project's lack of conformance with the General Plan and Airport Land Use Commission's (ALUC) policies pertaining to development within airport safety zones.

At the hearing, the applicant expressed concerns that compliance with all of the safety policies would impose an undue economic hardship by placing overly strict development constraints on the property. As noted in the original staff report, it was indicated that while there were added constraints on development, there were still ample lower intensity development opportunities for the developer.

Several representatives from the Airport Land Use Commission and others representing the pilot association spoke against the project and provided clarification about the ALUC policy requirements as well as the Federal Aviation Administration (FAA) policy requirements.

The Planning Commission expressed a general desire to accommodate some level of development that might be more significant than would be typically allowed under strict compliance with the safety policies. They gave the applicant direction to further modify the project to obtain a “better” level of overall compliance with the policies. Further, the Commission asked staff to refer the modified project to the FAA to obtain better feedback regarding compliance with federal level safety policies.

ANALYSIS

Project Changes by Applicant

The applicant provided revised plans to staff on July 29, 2005. The changes to the plans generally constitute rather subtle changes to the overall site and architectural design of the project and are consistent with the comments and direction given by the Planning Commission. The intent of the changes is to improve the “relative” safety of the project. The project revisions include the following nine (9) design changes:

1. The roof of the office has been changed to a solid, flat surface. The revised roof plan fills in the courtyard area and increases the size of the building to 95,592 square feet. To keep the roof clear of obstacles, most mechanical equipment has been moved off the roof and the elevator towers have been moved to the westerly most side of the building. The building still maintains a parapet wall that projects about 3 to 5 feet above the roof surface along the side closest to the street.
2. The concrete wall surrounding the outdoor storage area has been replaced with a chain-link fence with a breakaway base. The fence will be covered in fast growing vines to provide good screening of the yard.
3. There are no trees proposed around the perimeter of the storage yard. Planting will consist of shrubs only. Trees will be planted adjacent to the building.
4. The species of trees surrounding the building will not exceed 24 feet in height. This is consistent with the height of the proposed two-story structure.
5. The 12-foot tall light poles originally proposed in the outdoor storage area have been replaced by lower bollard-type lights with a breakaway base.
6. The drive aisles in the outdoor storage area have been changed to maximize a north/south orientation consistent with the direction of travel for aircraft.
7. The entrance to the storage area has been straightened and the high archway element has been removed.
8. The parking stalls for the outdoor storage area will be organized so that larger, taller vehicles will be parked toward the west side of the lot.

9. Windows have been added to the Tully Road building elevation to create a more “retail” appearance to the building.

Comments by the Federal Aviation Administration (FAA)

Pursuant to the direction by the Planning Commission, staff forwarded a copy of the revised plans to the FAA for comment. Comments were received on September 2, 2005 as noted in the attached memorandum. In summary, the FAA noted that the outdoor storage component of the site is located in the FAA “no object area” and therefore recommends the City not approve the project. In their letter, the FAA did not make any comments regarding the “relative” safety of the project as a result of improvements to the project design as originally proposed. They merely stated that the project does not comply with the policy. Although the FAA has no direct regulatory authority over the project proposal, they do have the ability to restrict flight activities in the future at the airport if deemed warranted as a result of the project. Staff has not been able to obtain any definitive information from the FAA about the type of the restrictions that could be imposed.

Requirement for Formal Override of ALUC Policy

In cases where the project involves a General Plan Amendment or Rezoning, the City must refer the proposal to the ALUC per agreement between the City and the County. Upon receipt of a formal determination from the County that such a project does not conform to ALUC safety policies, the decision makers (City Council) must formally make a determination upon adoption of a resolution to override the ALUC policies. In the case, since the subject project is being considered as part of a Site Development Permit Application, a formal referral to the ALUC was not required. In the interest of public safety and good planning practices, staff did send a copy of the plans to the ALUC as a “courtesy” referral.

Since this was not a mandated referral, contrary to the statement in the original staff report, a City Council action to override the ALUC safety policy is not technically required in order for the Planning Commission to approve the project if they so desire. The draft Planning Commission resolution will include facts and findings with respect to this issue that would generally be equivalent to those that would be included in a City Council resolution as a result of a mandated referral. It should be noted that an action to override ALUC policies is separate and should not be confused with the adoption of a “statement of overriding considerations” that would typically accompany a resolution for an EIR in which it is identified that a project has significant unavoidable impacts with respect to air traffic safety.

CEQA

An Environmental Impact Report (EIR) was prepared specifically for this project. This EIR was certified for this project by the Planning Commission at their hearing on November 14, 2001. The hearing did not coincide with a hearing on the project.

The EIR addressed a multitude of potential environmental issues such as land use, airport traffic safety, geology, aesthetics, transportation, noise, biological and cultural resources. Although projects of a similar type and scale have typically secured environmental clearance with a Mitigated Negative Declaration (MND), an EIR was prepared for this proposal due to special concerns related to potential safety impacts by constructing a structure and storage yard within the FAA and ALUC safety zones. The EIR concluded that there are no mitigation measures available to the City which would reduce the significant land use compatibility impacts to less than significant level. Therefore, the project would result in the creation of a significant unavoidable impact. Additionally, the EIR identified that the project would result in a significant unavoidable impact with regard to the loss of burrowing owl habitat.

If the Planning Commission decides to approve the subject Site Development Permit, a resolution, separate from that for the subject permit resolution will need to be adopted that addresses a “statement of overriding considerations” for the matters related to significant unavoidable impacts.

RECOMMENDATION

While staff recognizes the applicant has made several changes to the project which could reduce the potential risks pertaining to aviation safety, the project still fails to comply with both the ALUC and FAA safety policies. For this reason, staff continues to recommend “denial” as originally recommended and articulated in the staff report that was distributed prior to the Planning Commission hearing on May 25th. Staff also recognizes that there may be a general desire on the part of the Planning Commission to approve a project of a more intensive nature than that which would be allowed upon strict compliance with the ALUC and FAA safety policies. For this reason, staff has prepared a draft resolution for approval which includes standardized conditions for new development projects as well as special conditions related to project elements as proposed by the applicant and described in this report.

STEPHEN M. HAASE
Secretary, Planning Commission

c: Erik Schoennaur, The Schoennauer Company
Dana Peak, Santa Clara County ALUC Coordinator
Cindy H. Fan, property owner